

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HARSH ALKUTKAR,
Plaintiff,

v.

BUMBLE INC., et al.,
Defendants.

Case No. 22-cv-00422-PJH

**ORDER RE: PLAINTIFF'S
ADMINISTRATIVE MOTION FOR
LEAVE TO FILE SUR-REPLY AND
CONTINUE HEARING**

Re: Dkt. No. 38

The court is in receipt of plaintiff's administrative motion for leave to file a sur-reply in response to what he views as new arguments and evidence presented by defendants in their reply in support of the motion to compel plaintiff to arbitration. See Dkt. 36. Alongside the reply brief, defendants submitted the declaration of Christian Wong with exhibits introducing metadata and other evidence purporting to show plaintiff's activity on the Bumble app. See Dkt. 36-1. Plaintiff contends that this evidence and the arguments that follow are "crucial" to defendants' success on their motion to compel arbitration. Dkt. 38 at 5. "[A] district court does not abuse its discretion when, before considering new evidence attached to a reply brief, it gives the opposing party an opportunity to respond to the new evidence." Glass v. Asic N., Inc., 848 F. App'x 255, 257 (9th Cir. 2021) (citing Dutta v. State Farm Mut. Auto. Ins. Co., 895 F.3d 1166, 1172 (9th Cir. 2018)). Here, the court does not determine conclusively whether the Wong declaration and its exhibits constitute new evidence or constitute a response to plaintiff's opposition. Rather, in the interest of mitigating any potential unfairness, the court exercises its discretion and allows plaintiff an opportunity to respond to the additional evidence. The court hereby GRANTS

1 plaintiff's request for leave to file a sur-reply. Plaintiff shall file his sur-reply no later than
2 July 7, 2022. The sur-reply may not exceed five pages. The hearing on defendants'
3 motion to dismiss (Dkt. 28) and defendants' motion to compel plaintiff to arbitration (Dkt.
4 30) is continued to August 4, 2022, at 1:30 PM via Zoom unless, after review of the
5 papers, the court determines that no hearing is necessary.

6 **IT IS SO ORDERED.**

7 Dated: June 22, 2022

8 /s/ Phyllis J. Hamilton

9 PHYLLIS J. HAMILTON
10 United States District Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
Northern District of California